tion for any damages to the residue, including those sustained by reason of the use to which the part taken is put.

Although this principle is well established, *Wood on Railroads*, p. 1,036; 10 *Am. & Eng. Enc. Law* (2nd ed.) 1165, there is much conflict as to what elements are to be considered in the assessment of damages. Apparently a desire of the courts to justly compensate an owner, thus deprived, against his will, of his land, has led some of them to carry the doctrine too far. Some courts are disposed to allow assessment for "speculative and consequential damages"; *McReynolds v. R. R.*, 100 Ill. 152; *Bridge Co v. Geisse*, 35 N. J. Law 474; *Young v. Harrison*, 17 Ga. 30. The weight of authority, however, favors a stricter view, although one rather more liberal than in ordinary damage suits. *Watson v. R. R.*, 37 Pa. St. 469; *Tucker v. R. R.*, 118 Mass. 546; *Curtis v. R. R.*, 20 Minn. 28; *Clark v. Saybrook*, 21 Conn. 313. This case adopts the principle and lends its authority to the stricter view.

EMINENT DOMAIN—PUBLIC AND PRIVATE USE—PUBLIC GRISTMILLS.—GAYLORD V. SANITARY DIST. OF CHICAGO, 68 N. E. 522 (ILL.).—*Held*, that long usage recognizes public gristmills as "public utilities" justifying the exercise of the power of eminent domain; but other mills have not received such absolute sanction, and as private enterprises cannot exercise such power.

No mills other than gristmills have any claim to be of a public character. *Harding v. Goodlett*, 11 Tenn. 41. The exercise of the right of eminent domain is necessarily in derogation of private right, and hence the rule is that the authority is to be strictly construed. *Lance's Appeal*, 55 Pa. 16. *Contra.*—Whether a particular structure is for the public use is a question for the legislature, and their decision may be presumed correct. And the establishment of a great mill-power for manufacturing purposes is a recognized public use justifying the exercise of the right of eminent domain. *Hazen v. Essex Co.*, 66 Mass. 475. Raising of a milldam "for the encouragement of manufactures" is a taking of the lands thereby flowed for a public use. *Ash v. Cummings*, 50 N. H. 591. The Illinois court seems to have slighted the economic questions involved.

EQUITY—JURISDICTION—RIGHT TO ENJOIN—PENDING ACTION—LEGISLATIVE AUTHORITY—PRACTICE IN EQUITY.—WRIGHT ET AL. V. SUPERIOR COURT ET AL., 73 PAC. 145 (CAL.).—Under the civil code providing that an injunction cannot be granted to stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless to prevent a multiplicity of suits, *held*, that where an action is pending in one superior court, another superior court has no jurisdiction to entertain a bill of discovery and enjoin proceedings, except as above. Shaw, J., *dissenting*.

Spreckels v. Hawaiian Co., 117 Cal. 377, the only case relied on as authority, holds exactly the contrary, that jurisdiction existed, but under the law the statement of facts did not entitle to relief. The inconsistency in the main decision lies in the assumption that because the law deprives the plaintiff of a right of action, the court is ousted of its jurisdiction. It is based on the reasoning that the power of courts of equity to grant bills of discovery has been superseded or made inoperative by giving law courts the same power. *Contra.—People v. Davidson*, 30 Cal. 391; *Rosenberg v. Frank*,

58 Cal. 400. While this assumption is supported by *Bond v. Worley*, 26 Mo. 254; *Ex parte Boyd*, 105 U. S. 657; and *Rindskopf v. Platto* (C. C.) 29 Fed. 312, the great weight of authority is to the contrary, *Wood v. Hudson*, 96 Ala. 469; *Grimes v. Hilliary*, 38 Ill. App. 246; *Union Passenger R. R. Co. v. Mayor*, 71 Md. 238; *Elliston v. Hughes*, 1 Head. (Tenn.) 227.

EVIDENCE—EXPERT TESTIMONY—REMAINDERS.—RICARDS V. SAFE DEPOSIT AND TRUST CO., 55 ATL. 384 (MD.).—*Held*, incompetent to prove by medical testimony that a married woman 53 years of age was incapable of child-bearing for the purpose of defeating an estate in remainder.

There are some early English cases which upheld a presumption that a woman of advanced age was incapable of bearing a child. The more modern English cases have not adopted this presumption. *In re Dawson*, L. R. 39 Ch. Div. 155; *In re Sayers Trusts.*, L. R. Exch. 319. No case can be found in the American courts in which such a presumption has been given effect. *Lawson on Presumptive Evidence*, p. 302. If a physician may testify that because of a physical degeneracy a woman is incapable of bearing children so that a trust created for her benefit, during her life only, may be brought to an end and the vesting of a remainder may be defeated, no one can foretell to what lengths such a precedent would lead. The court holding this to be a case of first impression acted cautiously and with due consideration of the demoralizing consequences that might follow its decision.

INHERITANCE TAX—VALIDITY—CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES—UNCONSTITUTIONALITY OF STATUTE.—IN RE JOHNSON'S ESTATE, 139 CAL. 532.—A statute imposing a tax on property passing by will "other than to the use of father, mother, husband, wife, lawful issue, brother or sister," was amended to include "nieces and nephews, when a resident of this State." *Held*, not void as in conflict with the constitutional provision declaring that citizens of each State shall be entitled to privileges and immunities of the several States. Beatty, C.J., *dissenting*.

Overruling *Estate of Mahoney*, 133 Cal. 180, which finds authority in *Spraigue v. Thompson*, 118 U. S. 90, and which strikes out the amending clause as unconstitutional. Although the unconstitutionality of laws imposing a special tax discriminating against non-residents is clear; *Cullman v. Arndt*, 125 Ala. 581; and a court, if possible, construes, where an exemption is claimed, in favor of the tax and against the exemption; *R. R. Co. v. Grand Rapids*, 102 Mich. 374; nevertheless, by the great weight of authority, beginning with *Campbell v. Morris*, 3 Har. & M. (Md.) 554, the courts have held privileges granted by a State to its citizens to be extended to citizens of the several States. *Sprague v. Fletcher*, 64 Vt. 69; *The Slaughter House Case*, 16 Wall. 36.

INFANCY—WAGES OF SON—RIGHTS OF CREDITORS OF FATHER.—WISNER V. OSBORN, 55 ATL. 51 (N. J.).—*Held*, that the wages earned by an infant emancipated by his father, though living at home, are not subject to the claims of the father's creditors.

Absence of fraud must be shown. *Elfelt v. Hinch*, 5 Ore. 255. Living at home does not affect the infant's emancipation. *Wilson v. McMillan*, 62 Ga. 161; *Wood on Master and Servant*, p. 30. The authorities show much diversity of opinion on this point. Some courts hold that the wages may be